

Remarks

Claims 1-19 are pending in the application. Claims 1, 6, 9, 10-14 and 19 were rejected under 35 USC § 102(b) as being anticipated by Bruno et al. (US Patent No. 5,563,882).

Bruno is directed to switching two computers that are directly connected to each other in a point-to-point call to an intermediate MCU to allow the call to be bridged and to add more parties. The processors handling the calls in the first instance are those on the computers 12a and 12b. The processors that end up handling the calls are in a different device on the MCU. If the processors on the computers were determined to be the calls through which the switch is handled, the system of Bruno would not disclose changing processors. Further, the switch is initiated by the decision to add a third party to the call, not upon determination that one of the processors needs maintenance.

As amended, claims 1, 9, 12 and 14 require that a determination that the first processor needs maintenance is made, then the call is switched from one processor to another within the same network device. The processors may be in the same or different modules and the same or different cards, but they are within the same network device. Further, these claims have been amended such that the switching is performed until the processor is free for system maintenance.

Bruno does not teach, show nor suggest the invention as claimed. It is therefore submitted that claims 1, 9 12 and 14 are patentably distinguishable over the prior art and allowance of these claims is requested.

Claim 6 depends from claim 1, claim 10-11 depend from claim 9, and claim 19 depends from claim 14. These claims inherently contain all of the limitations of that claim. As discussed above, the prior art does not teach, show nor suggest all of the limitations of the base claim, much less the further embodiments of the dependent claims. With regard to

claim 6, the office action states Bruno further teaches initializing a second entity further comprises initiating a *retain* sequence on the second entity (Col. 61-65). Applicant is unsure if the word *retain* is supposed to be *retrain*, as there is no column given for the cite and it is unclear that any column 61-65 has to do with *retrain*, as that is the wording in claim 6. It is therefore submitted that claims 6, 10-11 and 19 are patentably distinguishable over the prior art and allowance of these claims is requested.

Claims 1, 9 and 14 are rejected under 35 USC 102(e) as being anticipated by Farris et al. (US 6,574,216).

The office action states that "the claimed first entity" reads on the Internet 50. This is not true. As defined in the claims prior to amendment, the entities were required to be on the same network device. As amended, the claims now require that the entities are processors, which obviously is not read on by a network. The switch between an Internet call and a PSTN call is not the same as switching between a first processor that is handling a call to a second processor to free up the first processor for maintenance. It is therefore submitted that claims 1, 9 and 14 are patentably distinguishable over the prior art and allowance of these claims is requested.

Claims 2-4 and 15-18 are rejected under 35 USC § 103(a) as being unpatentable over Bruno et al in view of Rogers (US Patent No. 5,581,462).

This combination of references is invalid on its face. One of the requirements needed to establish a *prima facie* case of obviousness is that there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings.

"There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art." *In re Rouffert*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58

(Fed. Cir. 1998). The level of skill in the art cannot be relied upon to provide the suggestion to combine references. *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999).

“The mere fact that the references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination.” *In re Mills*, 916 F. 2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). As the two references are directed to solving different problems, there is no motivation or suggestion to combine their teachings.

The combination of a telephony patent and a vehicle computer patent does not have any motivation to combine. Further, the addition of Rogers does not overcome the deficiencies of Bruno as a reference, as set out above. It is therefore submitted that claims 2-4 and 15-18 are patentably distinguishable over the prior art and allowance of these claims is requested.

Claims 5, 7 and 8 were rejected under 35 USC § 103(a) as being unpatentable over Bruno.

As Bruno is not directed to switching calls between two processors on a network device to allow the first processor to receive maintenance, Bruno cannot render obvious the further embodiments of claims 5, 7 and 8, which depend from claim 1. It is therefore submitted that claims 5, 7 and 8 are patentably distinguishable over the prior art and allowance of these claims is requested.

Claims 1, 9, 12 and 14 were rejected because they read on a simple transfer of a phone call.

This general assertion is not backed up by any reference or other showing that this is well known. Therefore, Applicant traverses this rejection and requires the Examiner to support this general allegation with references and evidence. Further, the invention as

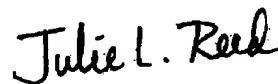
claimed is not directed to 'simple transfer of a phone call.' The invention as claimed is directed to switching an active call being handled by a first processor to a second processor while the call is active, so the first processor can receive maintenance. The process of switching an active call between two processors is not a simple process.

No new matter has been added by this amendment. Allowance of all claims is requested. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

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Respectfully submitted,

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